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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,420	02/10/2004	Uwe Allerding	H01.2-11473	9731
490	7590	10/05/2006	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			BRAHAN, THOMAS J	
		ART UNIT	PAPER NUMBER	
			3654	

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/775,420	ALLERDING ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Thomas J. Braham	3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 10 February 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-4 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-4 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-89)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/20/04.

4)  Interview Summary (PTO-413)

Paper No(s)/Mail Date. \_\_\_\_\_

5)  Notice of Informal Patent Application

6)  Other: \_\_\_\_\_

Art Unit: 3654

1. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.

2. Claims 1-4 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document. For example:

- a. In claim 1, line 4, the term "the horizontal line" lacks antecedent basis within the claim.
- b. In claim 1, lines 4-6 appear to have a positive inclusion of the two operating means within the limitation "an electric control and regulation device for the respective drives which is connected to operating members for the lifting and lowering drive and inclination drive". It is unclear as to how line can add another operating member by the limitation "the control and regulation device is connected to a separate operating member". Is this separate operating member a third operating member or a redundant inclusion of one of the previous operating members?
- c. In the penultimate line of claim 1, it is unclear as to which element "it" is within the phrase "actuating it".
- d. In the last line or claim 1, the phrase "preferably a horizontal position" renders the claims indefinite as the term "preferably" fails to positively claim the structure of the invention.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

Art Unit: 3654

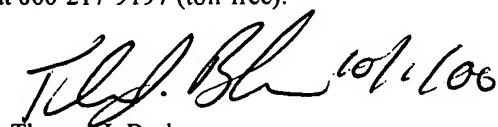
5. Claims 1 and 3, as understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Yuki et al. Yuki et al shows a fork-lift truck having control and regulation device, characterized in that an analog sensor detecting the inclined position of the load-carrying fork, see column 5, lines 55 and 56, to automatically level the forks as the first lifting step, see column 5, lines 18-37.

6. Claim 2, as understood, is rejected under 35 U.S.C. § 103(a) as being unpatentable over Yuki et al in view of Ishikawa. Yuki et al shows the basic claimed fork lift device, as detailed above, but varies from claim 2 by determining the tilt based upon the tilt cylinder position instead of using a tilt sensor. Ishikawa shows a similar control device and teaches that the measuring can be indirect measuring on the tilt cylinder, or could be carried out by means of a tilt sensor on the mast, see the last two lines of column 11 through the first three lines of column 12. It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the fork lift control arrangement of Yuki et al by substituting a tilt sensor for the cylinder sensor, as these are art recognize equivalents, as taught by Ishikawa.

7. Claim 4, as understood, is rejected under 35 U.S.C. § 103(a) as being unpatentable over Yuki et al in view of Avitan et al. Yuki et al shows the basic claimed fork lift device, as detailed above, but varies from claim 4 by not limiting the vehicle speed based upon fork lifts operator parameters. Avitan et al shows a similar control device which limits vehicle speed, see column 18, lines 42-58. It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the fork lift control arrangement of Yuki et al by having the control device limiting the vehicle speed, to prevent tipping, as taught by Avitan et al.

8. Applicant's prior art cited May 20, 2004 has not been considered as the reference is in German.

9. An inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Braham whose telephone number is (571) 272-6921. The examiner's supervisor, Ms. Katherine Matecki, can be reached at (571) 272-6951. The new fax number for all patent applications is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions regarding access to the Private PAIR system, should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas J. Braham  
Primary Examiner  
Art Unit 3654